

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Ronard Lora, et al., individually and on
behalf of all others similarly situated,

Plaintiffs,

-against-

J.V. Car Wash, Ltd., et al.,

Defendants.

Civ.No. 11-9010 (LLS)

**AFFIDAVIT OF J.VASQUEZ
IN SUPPORT OF MOTION
TO DISMISS FOR LACK
OF SUBJECT MATTER
JURISDICTION**

Jose Vasquez, being duly sworn, under the penalties of perjury deposes as says as follows:

1. I am a defendant in the above-captioned matter and submit this affidavit in support of the motion by all defendants to dismiss the instant action for want of subject matter jurisdiction.
2. I am the owner of the four car wash defendants in this matter, one in New Jersey, the other three in New York, and am fully familiar with the facts as stated herein.
3. None of the plaintiffs work for me, or for the car washes. I have a steady roster of workers at all four car washes, all of whom are local residences. Appended hereto as **Exhibits A, B, C, and D, respectively**, are various employee rosters of the 4 car washes maintained by my accountants in connection with filing of Quarterly Tax Returns which show the steady rosters, none of which include these putative plaintiffs. These documents have been provided to plaintiffs' counsel.

4. When I hire a worker, we fill out a W-4 as required by the IRS, which includes name, address, social security number, and deductions claimed. I also ask for a picture "Id", which is usually a driver's license, although on occasion I have accepted a passport. In addition, I ask them if they are citizens of the United States and, if not, I ask for their "Green Card".
5. As can be seen from Exs. A-D, none of the named plaintiffs are on the roster of any of the four car washes.
6. I hire all of the car wash employees locally in their neighborhoods for several reasons; there are always plenty of people ready, willing, and able to work in the neighborhoods surrounding the car washes and, because we pay minimum wage, it really would make no sense to recruit from outside the neighborhood.
7. These are not affluent neighborhoods. The neighborhoods for the most part are somewhat dangerous and the people are poor and cannot afford to spend money to travel to another minimum payment job if one is readily available around the corner.
8. It is also to my advantage to have local help merely because my workers are known in the neighborhood and, therefore, less likely to be harassed by other people in the neighborhood than might be the case if they were outsiders.
9. None of these plaintiffs have worked at my carwashes. Had they, I would have had the same information about them as I do for all the workers on my roster and, given their refusal to provide information in their depositions, I would never have hired them.
10. I sat in on the depositions of Messrs. Margarito Gallardo, Eduardo Lora, Robertigo Perez, Hugo Rivera, Ramon M. Alvarez, Melvin Lora, Braulio Flores, Giovanny

Paulino, Jose R. Rodriguez-Tineo, Michel Rodriguez, Jose Antonio Pichardo, Francisco Leoner Guerrero, Rojas Corona Valerio, Ramiro Rodriguez, Marco Antonio Diaz, Ronard Lora, and Jose V. Rodriguez. I never saw these men before those depositions except when they came on the premises of some of the car washes and began to "run their own business" by detailing cars, cleaning and shampooing interiors, and tinting windows of some of my car wash customers.

11. My car washes are simply that, car washes. We wash cars for \$7.00 per wash. We do not wax or detail any of them, although we had done some on a limited basis some time ago. The only accompaniment now is to spray a liquid soap on the vehicle as it is being dried. It is neither long-lasting or very durable but it makes the newly washed vehicle look better.
12. In the first place, I am not so sure that the detailing business is as profitable as people may think because it takes a long time to compound and then wax an automobile, and to clean and shampoo the interior, and vacuum out its trunk. You need a few workers per detail and unless you can charge in excess of approximately \$120 per car, utilizing four workers, or twelve man hours, even at the minimum wage, you really cannot make money if it takes three hours to complete. The profit margin just would not be there if your labor is close to \$90.00 an hour, not counting materials, etc.
13. I have chosen to run a very "Spartan" business. I accept only cash and charge a very reasonable rate of \$7.00 per wash. It is a quick turn-around business.
14. Apparently, these plaintiffs saw an opportunity to develop their own business by coming on my premises and offering "detail" work to car wash customers.

15. In retrospect, if I knew what shiftless liars they were, or that they would try to extort money from me, I would have had them arrested very early on when they first appeared on the premises.
16. As I have stated before in other affidavits submitted in this action, when I tried to evict them from the premises, they threatened and intimidated both me and my staff. And, in some ways it became easier to let them stay to the side of the car washes and offer their services rather than to be harmed by these thugs.
17. Not many customers want to spend the money or waiting time associated with "detailing", but it was there if they wanted it and so long as they left me and my crew alone I felt that there would be no harm.
18. Of course, I never expected that they would turn around and contend that they worked for me which is an out and out lie.
19. I do not know these plaintiffs, although some look familiar as the ones who came on my lots and waxed cars for some of my customers. I believe that the majority of these people are merely hooligans trying to extort me.
20. For example, during their depositions, several of these plaintiffs actually could not recall the name of the car wash at which they worked, nor its location, nor how many hours they allegedly worked.
21. One would think that if you had a claim against someone in federal court for back wages, you could tell them how much they owed you, for what services, and where they allegedly earned this money?
22. Although their attorney directed the plaintiffs not to answer questions in their depositions, which my new attorney informs me is prohibited by the applicable rules,

we have never learned from the mouths of these men how much they were to earn from allegedly working for me, whether they have social security numbers, whether they are even in the United States legally, and/or whether they have declared the income which they contend I paid to them.

23. Although the Court upheld the plaintiffs' counsel's request not to turn over the income tax returns of these people until trial, one would think that to establish having worked for me these men would be happy to show the Court evidence of having actually worked at the car washes by providing their income tax returns rather than merely contending that they worked for me unless, of course, they have failed to file income tax returns thereby avoiding paying income taxes.

24. It's as if someone could walk up to your front door and tell you that they lived in your house, but could not show anything to establish that they even knew of the existence of your home until they wandered into the neighborhood. No identification, nothing with your address on it.

25. I understand that, according to plaintiffs' counsel in a letter to the Court, some of these men allegedly have seen a number of out of state cars at the car wash on Broadway. I respectfully submit that this is not the case but, even if it were, it is dispositive of nothing.

26. In the first place, all my clientele is local. Everyone comes into these car washes from the neighborhood in which it is situated. I know of one fellow in particular whose car is washed every week but is registered to his sister in West Virginia. He lives, and works, in the neighborhood.

27. Secondly, with gas at \$3.70 a gallon and tolls at \$13.00 to cross the George Washington Bridge or one of the tunnels, for example, who in their right mind is going to drive into Harlem for a car wash even if it is only \$7.00 per car?
28. Of course, there may be an incidental and isolated instance where someone driving through town wanted to get a car wash, but I can safely say that more than 99% of my clients are local.
29. For anyone to suggest that cars are coming into New York from out-of-state to get a \$7.00 car wash or even to have a car detailed by these people is a joke. People get their cars washed and/or waxed where they live.
30. I use municipal water to wash the cars.
31. I buy liquid soap and a tire rim cleaner, almost always at the beginning of the month, in equal volume, approximately twelve times a year, for the three car washes in the City of New York from Gliptone, a company located at 1740 Julia Goldbach Avenue, Ronkonkoma, N.Y., 11779, which manufactures the soap, the rim cleaner and a liquid spray wax on Long Island, but has several distributors in New York State. Annexed hereto as **Exhibit E** are the most recent invoices for soap sold to Webster Hand Car Wash, Harlem Hand Car Wash, and J.V. Hand Car Wash (Broadway) from Gliptone.
32. I buy liquid soap and tire gel in New Jersey from Jobe Industries in Linden, New Jersey, which manufactures the soap and tire gel, as well as other automobile-related products in its facility in New Jersey, and has been doing so for over 50 years. Annexed hereto as **Exhibit F** is this month's invoice from Jobe.
33. I buy recycled towels from a vendor in New York named Wipe-Tex, located in the Bronx. The vendor comes around every few weeks with recycled towels which he

vends to car washes and restaurants. I understand that he purchases these surgical towels from local hospitals, which are prohibited from using the towels more than once, and then recycles them in New York. Annexed hereto as **Exhibit G** is a May invoice from Wipe-Tex.

34. In New Jersey, I buy the same kind of towels from Car Wash World, located in Belleville, N.J., another local jobber/ distributor.

35. I do not use Armor All or Ecolab products, as the plaintiffs' counsel has stated in her letter to the Court, nor any other detailing products for the simple reason that I do not do any detailing or interior work anymore and haven't for years. Except for the liquid wax, which is manufactured in New York, we use no other wax-like product.

36. Nonetheless, when we did detailing several years back, we used the products locally manufactured by Jobe and Gliptone, which are cheaper than the Armor All and Ecolab products that are actually sold retail to car owners. No one in their right mind doing a wholesale detailing business would use those expensive retail products.

37. I run a cash business; \$7.00 dollars per car. I pay every worker cash at the end of each and every day.

38. I take no credit cars, and I accept no checks because most customers would not want to use a card for that small an amount. Many of these poor people do not have credit cards, but most importantly the processing cost to me would be prohibitive at the rate charged by the credit card companies for what is a modest \$7.00 per car wash.

39. I visit each car wash each day. Since I use a mechanical counter at each car wash, I know exactly how many cars came through at \$7 per car.

40. Since I know who works for me, I know how many men were paid at the end of the each day for how many hours worked and, therefore, know what my net revenues are for each day. These cash deposits, which I bring to, and deposit in the bank at the end of the week, less any disbursements needed in the business for which I also pay cash such as the soaps and towels, define my revenues.

41. I operate a service business to meet the needs of the automobile owners in the neighborhoods where I maintain these car washes, giving them a good car wash at a more than reasonable rate.

42. The plaintiffs decided to usurp my premises to engage in a business of which I was not interested.

43. They came on the premises, used my water, sometimes pilfered towels, and went about their business of waxing the cars, putting Armor All on the dash boards, and tinting windows.

44. Now, they want to extort money from me as well.

45. I have worked very hard in this country since emigrating from Cuba to Spain with my family in 1988 when my brother, who was a political prisoner in Cuba, was allowed to leave.

46. I started these car washes from scratch and built four decent businesses which these men are now trying to destroy.

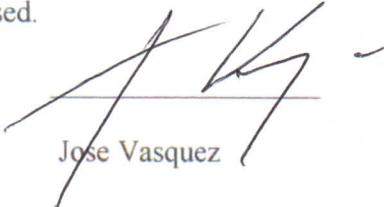
47. The plaintiffs have also suggested that I use a van to transport workers from New York to the Bay Way Hand Car Wash in Elizabeth, N.J. This is not only another lie, but ridiculous.

48. In the first place, while I do not want to say anything bad about my workers, they are just guys who dry cars. They are not skilled workers in any sense.

49. Secondly, why would I transport workers from New York to New Jersey when there are hundreds of out-of work people in the Elizabeth neighborhood where Bay Way Hand Car Wash is located who are looking for work?

50. In addition, it is a matter of public record (Department of Motor Vehicle Records) that neither I, personally, nor any of the four washes own a van. The only truck I own is a two-seat, GMC truck with a snow plow on the front, which I use to clear snow from the car washes in Winter. These allegations about transporting workers are as ridiculous as are those that suggest that these people work for me.

51. My businesses are local; I buy local products from local vendors. As such, according to my attorney, this matter should not be the subject of federal subject matter jurisdiction and I respectfully request that it be dismissed.



Jose Vasquez

Sworn to before me this 5 day of September, 2013



Notary Public

